IN THE SUPREME COURT OF MISSISSIPPI

NO. 2014-CA-01696-SCT

WELLNESS, INC., d/b/a WELLNESS ENVIRONMENTS **APPELLANT**

VS.

PEARL RIVER COUNTY HOSPITAL **APPELLEE**

REPLY TO PEARL RIVER COUNTY HOSPITAL'S RESPONSE TO APPELLANT'S MOTION TO POSTPONE ORAL ARGUMENT

COMES NOW, the Appellant, Wellness Inc., d/b/a Wellness Environments ("Wellness"), by and through counsel, and files this, its Reply to Pearl River County Hospital's Response to Appellant's Motion to Postpone Oral Argument and states the following:

Pearl River County Hospital's ("the Hospital") Response purports to show Wellness' counsel as attempting an end-run against the rules. This is not the case. Originally, when the oral argument was scheduled for August 3, 2015, undersigned counsel (who will be arguing the case) was due to be in Washington, DC to be sworn into the District of Columbia District Court on September 14, 2015, returning on September 15, 2015. This swear-in ceremony is done once a month. After this Court rescheduled the oral argument, undersigned counsel cut short the trip to return on September 14, 2015 night instead of September 15, 2015.

As to the assertion that counsel did not let the federal court know that we had oral argument scheduled in this case on September 15, 2015, it is a complete fabrication and is disposed of by reading the Hospital's attached exhibits. *See* Exhibit "B" to the Hospital's

Exhibit "A"

Response, ¶9 ("In an effort to further accommodate the parties, the Court offered to move a previously scheduled criminal trial on September 14, 2015. But this alternative was rejected because of conflicts on both sides.") Counsel did advise the court that an oral argument was scheduled for September 14, 2015. The federal court then offered two more dates; September 21, 2015 and September 28, 2015. Both of these dates were already set for trial in other cases, and counsel for Wellness attempted to reschedule one of those trials to accommodate the already set oral argument. Plaintiff's counsel in those cases refused to reschedule. The *only* other date available for trial was September 14, 2015. Counsel for Wellness had to agree to the September 14, 2015 trial date or the defendant in that case would have not been able to be a participant in her own trial. That would have been an unacceptable outcome.

The Hospital's assertions that the "situation" arising in the federal court after undersigned counsel's August 3, 2015 email to Hospital's counsel assume too much. A Jury Instruction Conference was held on August 4, 2015 (when the trial was still scheduled and which counsel was prepared to try on August 10, 2015, which the attached docket clearly reflects). Counsel for plaintiff telephoned counsel for defendants in that case after the conference and attempted to disclose a number of different items already requested in discovery. The necessity of the Motion *in limine* arose on August 4th and August 5th, after plaintiff in that case late-disclosed discovery. The federal court then continued the trial to August 24, 2015 allowing "limited discovery." The docket clearly demonstrates those facts.

It is true that undersigned counsel emailed the Hospital seeking a change in the oral argument date after this Court rescheduled it due to arguing counsel's unavailability on September 15, 2015. However, that was rectified by undersigned counsel returning a day

earlier. In an attempt to speed up the proceedings and that counsel for Wellness did not request oral argument[1], counsel for Wellness requested that the issues be presented to this Court on the briefs instead; a request which the Hospital refused. Counsel for Wellness believes that this case is one appropriately decided on the briefs, as Miss.R.App.P. 34(3) contemplates: "The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." If the Court requires argument, counsel for Wellness believes that a conference with opposing counsel and the Court's administrator would be helpful in selecting a day that is conflict free.

RESPECTFULLY SUBMITTED, this the 20th day of August, 2015.

WELLNESS INC., d/b/a WELLNESS ENVIRONMENTS

By: /s/ *Stephen D. Stamboulieh*
J. Tucker Mitchell, Esq. (MSB NO. 3372)
Stephen D. Stamboulieh Esq. (MSB NO. 102784)
MITCHELL DAY LAW FIRM, PLLC
618 Crescent Blvd, Suite 203
Ridgeland, MS 39157
Telephone: (601) 707-4036
Facsimile: (601) 213-4116
tmitchell@mitchellday.com
sstamboulieh@mitchellday.com

ATTORNEYS FOR APPELLANT

[1] The Hospital's Statement Regarding Oral Argument states: "The present appeal involves a public board's supposedly being required to arbitrate pursuant to an agreement never spread upon its minutes. While that is a straightforward issue given the generations of case law on the subject, this case also presents some relatively obscure federal case law, which the Hospital hopes it has explained adequately, but about which this Court might nonetheless wish to inquire of counsel for both sides. The Hospital submits that this case is one in which oral argument may prove useful to the Court, and requests that oral argument be granted." See Brief for Appellee, p. vii.

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Supreme Court using the MEC system which sent notification of such filing to the following and mailed by United States Postal Service, postage prepaid, as appropriate, to non-MEC filers:

Thomas L. Kirkland, Esquire
Allison C. Simpson, Esq.
Copeland, Cook, Taylor & Bush
Post Office Box 6020
Ridgeland, Mississippi 39158
Attorneys for Pear River County Hospital

The Honorable Prentiss G. Harrell
Pearl River County Circuit Judge
P.O. Box 488
Purvis, Mississippi 39475

Rick Norton, Esquire
Joseph Tullos, Esquire
Bryan Nelson, P.A.
Post Office Drawer 18109
Hattiesburg, Mississippi 39404-8109
Attorneys for PierCon, Inc.

Steve Thornton, Esquire
Thornton Law Office
Post Office Box 16465
Jackson, Mississippi 39236
Attorney for Wade Walters,Performance Capital Leasing , LLC, Performance Accounts Rec., LLC

William Quinn, II, Esquire
William Bardwell, Esquire
Zachary M. Bonner, Esquire
McCraney, Montagnet, Quin, Noble
602 Steed Road, Suite 200
Ridgeland, Mississippi 39157
Attorneys for Kingsbridge

Carol Ann Estes Bustin, Esquire
32 Office Park Drive
Hattiesburg, Mississippi 39402
Attorney for Hope Thomley

Dorsey R. Carson, Jr., Esq.
Carson Law Group
Capital Towers, Suite 1336
125 South Congress Street
Jackson, Mississippi 39201
Attorney for ProjX

Matthew DeVries
401 Commerce Street, Suite 800
Nashville, Tennessee 37219
Attorney for ProjX

Donald Dornan, Jr.,Esquire
Lauren Hillery, Esq.
Spyridon, Palermo & Dornan
154 Porter Avenue
Biloxi, Mississippi 39533
Attorney for Colette Oldmixon

Dewitt L. Fortenberry, Jr., Esquire
Ashley Tullos, Esquire
Baker Donelson
Meadowbrook Office Park
4268 I-55 North
Jackson, Mississippi 39211
Attorneys for Stepping Stones

Lane Reed, Esquire
Mary Kathryn Williamson, Esquire
McGehee, McGehee & Torrey
26 First Street
Meadville, Mississippi 39653
Attorneys for Mike Boleware

Robin Roberts, Esq.
307 West Pine Street
Hattiesburg, Mississippi 39401
Attorney for Dennis Pierce

THIS the 20th day of August, 2015.

/s/ *Stephen D. Stamboulieh*